THE HON'BLE SRI JUSTICE BILAL NAZKI
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.20356 of 2007

Dated: 05-10-2007

Between:

Sri Gautam Chand Jain.

…Petitioners

and

Board for Industrial & Financial reconstruction, Newdelhi and others.

…Respondents

THE HON'BLE SRI JUSTICE BILAL NAZKI
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.20356 of 2007

Dated: 05-10-2007

Order: (Per The Hon'ble Sri Justice Bilal Nazki)

An interim order was passed by the Board for Industrial & Financial Reconstruction (for short 'the BIFR') on 17-10-2006 in Case No.5 of 1996. The final order is yet to be passed in the matter by the BIFR. One of the directions given by the BIFR by its interim order dated 17-10-2006 is that, 'Till the scheme of revival is duly approved by the Bench, M/s.GSA shall not have any

locus standi to perform any function on behalf of the Company in any manner what so ever by representing them as co-promoter or in any other capacity'. Against this condition and direction, the petitioners are aggrieved of and they filed an appeal before the Appellate Authority for Industrial & Financial Reconstruction (for short 'the AIFR'), which was dismissed on the ground that the appeal was filed beyond the period of limitation of 60 days and the AIFR had no power to condone the delay. Hence, this Writ Petition has been filed.

There is no quarrel that it is settled that the AIFR has no power to condone the delay in entertaining the appeal beyond 60 days. However, the learned Counsel for the petitioners submits that this Court, in the power of judicial review, can go beyond this order and examine the correctness of the order passed by the BIFR.

We have heard the learned Counsel for the petitioners, and perused the record.

The impugned order dated 17-10-2006 is passed at an interim stage of the proceedings and the final order is yet to be passed. Admittedly, the petitioners' firm was not the promoter of M/s.GSA, whose matter is pending before the BIFR. It is perhaps during the pendency of the proceedings that the petitioners entered into some sort of agreement to become a
co-promoter, which obviously could not have been done without the permission of the BIFR. Therefore, the direction given by the BIFR cannot be faulted.

This Writ Petition is also otherwise not maintainable as it suffers from nonjoinder of necessary parties. Even the promoter has not been made a party-respondent. It is only the BIFR and the AIFR, who have been made parties to this Writ Petition, and they have nothing to defend as they are
quasi-judicial authorities and are not expected to defend the orders. In any case, if the order of the BIFR is set aside by this Court that would effect neither of the respondents but could effect the parties, who had not been made respondents.

Therefore, the Writ Petition is misconceived and the same is, accordingly, dismissed at the stage of admission. No costs.

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(Bilal Nazki, J)

Dated 5th October, 2007

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(Ramesh Ranganathan, J)

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